

1 Thomas W. McNamara
2 mcnamarat@ballardspahr.com
3 655 West Broadway, Suite 1600
4 San Diego, California 92101-8494
5 Telephone: 619-696-9200
6 Facsimile: 619-696-9269

7 *Receiver*

8 Edward Chang (NV 11783)
9 change@ballardspahr.com
10 Andrew Robertson (*pro hac vice*)
11 robertsona@ballardspahr.com
12 Daniel Benjamin (*pro hac vice*)
13 benjamind@ballardspahr.com
14 **BALLARD SPAHR LLP**
15 655 West Broadway, Suite 1600
16 San Diego, CA 92101
17 Tel.: 619-696-9200
18 Fax: 619-696-9269

19 *Attorneys for Receiver*

20 UNITED STATES DISTRICT COURT
21 DISTRICT OF NEVADA

22 FEDERAL TRADE COMMISSION,
23 Plaintiff,

24 v.

25 IDEAL FINANCIAL SOLUTIONS, INC., a
26 corporation; ASCOT CROSSING, LLC, a
27 limited liability company; BRACKNELL
SHORE, LTD., a limited liability company;
CHANDON GROUP, INC., a corporation;
AVANIX, LLC, a limited liability company;
FISCAL FITNESS, LLC, a limited liability
company; STEVEN SUNYICH, individually
and as an officer and director of the corporate
defendants; MICHAEL SUNYICH, individually
and as an officer and director of the corporate
defendants; CHRISTOPHER SUNYICH,
individually and as an officer and director of the
corporate defendants; SHAWN SUNYICH,
individually and as an officer and director of the
corporate defendants; MELISSA SUNYICH
GARDNER, individually and as an officer and
director of the corporate defendants; and KENT
BROWN, individually and as an officer and
director of the corporate defendants.

Defendants.

2:13-CV-0143-MMD-GWF

~~PROPOSED~~ PROTECTIVE AND
CONFIDENTIALITY ORDER AS TO
DOCUMENT PRODUCTION BY
PAYMENT DATA SYSTEMS

1 Upon consideration of the Receiver's motion for a protective and confidentiality order
 2 regarding document production by Payment Data Systems ("Producing Party"), and the Court
 3 having found that the discovery of information that implicates third-party confidentiality rights
 4 and/or that is confidential or proprietary has been requested in this action, and that the disclosure
 5 and distribution of such information should be reasonably restricted, the Court finds that good
 6 cause exists for the entry of this Order, and it is hereby ORDERED as follows:

7 **I. DEFINITIONS**

8 A. "Party" means any of the parties to this action, including the Receiver, and any of
 9 their officers, directors, partners, members, principals or affiliates.

10 B. "Counsel" means counsel of record in this action for any of the parties to this action
 11 and those attorneys' stenographic, clerical, and paralegal employees, or outside
 12 support personnel and services whose duties and responsibilities in the conduct of
 13 this action require access to Confidential Material.

14 C. "Discovery Material" means:

15 (1) any information, document, tangible thing, or response to discovery
 16 requests pursuant to Fed. R. Civ. P. 33, 34, or 36,;

17 (2) any deposition testimony or transcript revealed during depositions upon oral
 18 or written examination pursuant to Fed. R. Civ. P. 30, or 31;

19 (3) any document, thing, or premises made available for inspection or produced
 20 to the Receiving Party pursuant to Fed. R. Civ. P. 26, 33, or 34;

21 (4) any document, thing, or premises made available for inspection or produced
 22 to the Receiving Party in response to a subpoena pursuant to Fed. R. Civ. P.
 23 45; and

24 (5) any other similar materials, or portions thereof.

25 D. "Producing Party" means non-party Payment Data Systems, including its directors,
 26 employees, and agents.

1 E. "Receiving Party" means a party (including the Receiver) to this action, including
 2 all employees, agents, and directors (other than Counsel) of the Party, who receives
 3 Discovery Material from a Producing Party.

4 F. "CONFIDENTIAL" means any document, discovery response, testimony, or
 5 information that the Producing Party reasonably believes embodies: (i) trade
 6 secrets, proprietary, or other confidential business information; or (ii) information
 7 invasive of an individual's legitimate privacy interests.

8 G. "Confidential Material" means any Discovery Material, and any copies, abstracts,
 9 summaries, or information derived from such Discovery Material, and any notes or
 10 other records embodying or disclosing the contents of such Discovery Material,
 11 that is designated as CONFIDENTIAL in accordance with section II below.

12 **II. DESIGNATION OF CONFIDENTIAL MATERIAL**

13 Any document, any information produced on magnetic disk or other computer-related
 14 media, and any portion of oral testimony produced or given in this action that is asserted by
 15 Producing Party to contain or constitute CONFIDENTIAL information shall be so designated by
 16 Producing Party. The first page of each document or the front of each disk that contains
 17 CONFIDENTIAL information shall be marked on its face with the following legend:

18 "CONFIDENTIAL"

19 Transcript pages containing or constituting CONFIDENTIAL information shall be marked
 20 CONFIDENTIAL on each such page, and the transcript shall be marked confidential on its cover
 21 page.

22 **III. ACCESS TO CONFIDENTIAL MATERIAL**

23 A. Subject to section III(B), III(C), and III(D), in the absence of an order of the Court,
 24 any CONFIDENTIAL information produced in accordance with the provisions of
 25 section II above shall be used solely for purposes of the prosecution and defense of
 26 this action and shall not be disclosed to or discussed with any person other than: (i)
 27 Counsel for the Receiving Party; (ii) persons employed by, or who are independent
 28 contractors of, the Receiving Party who are participating in the management of the

1 litigation and the preparation of this case for trial; (iii) outside experts or
2 consultants who are engaged for the purpose of this action by the Receiving Party
3 and such experts' or consultants' support personnel; (iv) the individual(s) who
4 authored, prepared, or received the information; (v) certified court reporters taking
5 testimony involving such CONFIDENTIAL information and their support
6 personnel; and (vi) the Court (including any trier of fact) in connection with the
7 proceedings in this action.

8 B. Outside Experts and Consultants. Subject to the provisions of this Protective
9 Order, all Confidential Material may be disclosed to any outside expert or
10 consultant who has agreed to be bound by the terms of this Protective Order by
11 signing an Acknowledgement form attached as Exhibit A. Executed copies of the
12 Acknowledgment form shall be exchanged between counsel promptly upon
13 request, and the absence of a signed Acknowledgment justifies the Producing
14 Party's refusal to provide documents until a signed Acknowledgment is provided
15 by the Receiving Party.

16 C. Employees of a Party. Subject to the provisions of this Protective Order, all
17 Confidential Material marked CONFIDENTIAL may be disclosed to an Employee
18 of a Party.

19 D. Acknowledgment of Protective Order. Before obtaining access to any Confidential
20 Material covered by this Protective Order, any person who is authorized to have
21 access to Confidential Material pursuant to this Protective Order must have agreed
22 in writing to be bound by the terms of this Protective Order by signing an
23 Acknowledgement form attached as Exhibit A, an executed copy of which shall be
24 provided to the opposing party. This provision does not apply to Parties,
25 employees of a Party, or Counsel for a Party (including all employees, support
26 staff, or those of Counsel's law firm or agency), or any recipient under Section IX,
27 all of whom may access Confidential Information without separately signing
28 Exhibit A.

1 E. Disclosure Pursuant to Consent. Confidential Material also may be disclosed to
 2 anyone so authorized by prior written consent of the Producing Party, and no Party
 3 is restricted in any way by this Protective Order in disclosing its own Confidential
 4 Material.

5 F. Parties' Counsel may show Confidential Material in unredacted form to a witness if
 6 that person has executed Exhibit A or otherwise authorized under this Protective
 7 Order to have access to such document. Otherwise, prior to being shown to the
 8 witness, the document shall be redacted to remove all information covered by Fed.
 9 R. Civ. 5.2.

10 G. The limitations on disclosure contained in this Protective Order shall not apply to
 11 documents or information that: (i) were in the possession of the Receiving Party
 12 before disclosure by the Producing Party without a restriction from any Party to this
 13 action, or (ii) are or become published or available in a manner not in violation of
 14 this Protective Order

15 **IV. COURT PROCEDURES**

16 If a document containing CONFIDENTIAL information is filed with the Court, it shall be
 17 filed with one of the following notations:

18 Filed Under Seal - Contains CONFIDENTIAL Information

19 Subject to Protective Order

20 Any papers containing Confidential Material shall indicate clearly what portions are
 21 designated as CONFIDENTIAL.

22 **V. HANDLING OF CONFIDENTIAL MATERIAL**

23 A. Nothing herein shall restrict a person authorized to have access pursuant to
 24 paragraph III(A) from making working copies, abstracts, digests, and/or analyses of
 25 Confidential Material for use in connection with this action. Such working copies,
 26 abstracts, digests, and analyses shall be deemed to have the same level of protection
 27 as the original Confidential Material under the terms of this Protective Order.
 28 Further, nothing herein shall restrict an authorized recipient from converting or

1 translating such information into machine-readable form for incorporation in a data
2 retrieval system used in connection with this action, provided that access to such
3 information, in whatever form stored or reproduced, shall be limited to authorized
4 recipients.

5 B. If the Producing Party through inadvertence produces any CONFIDENTIAL
6 document or thing without labeling, marking, or otherwise designating it as such in
7 accordance with the provisions of this Protective Order, the Producing Party may
8 give written notice to the Receiving Party that the document or thing produced is
9 deemed CONFIDENTIAL and should be treated as such in accordance with the
10 provisions of this Protective Order. The Receiving Party must treat such document
11 or thing with the noticed level of protection from the date such notice is received.
12 Promptly upon providing such notice to the Receiving Party, the Producing Party
13 shall provide the Receiving Party with another copy of the document or thing that
14 bears the new confidentiality designation under this Protective Order.

15 C. A Party or present employee of a Party may be examined and may testify
16 concerning all CONFIDENTIAL information produced by that Party.

17 D. Non-parties may be examined and may testify concerning any document containing
18 CONFIDENTIAL information of a Producing Party that clearly appears on its face
19 or from other documents or testimony to have been prepared by, received by,
20 known by, or communicated to the non-party.

21 E. If no confidentiality designation of deposition testimony is made at the time of the
22 deposition, any transcript containing CONFIDENTIAL information shall be
23 designated as containing such information by no later than thirty (30) calendar days
24 after receipt of the transcript of the deposition. Otherwise, such transcript shall not
25 be deemed Confidential Material.

26 F. This Protective Order shall not prevent any Party from moving the Court for an
27 order that a non-party may be examined and may testify concerning any document
28 containing CONFIDENTIAL information of a Producing Party. Prior to so

1 moving, the Party seeking to examine the non-party or have the non-party testify
2 may (but is not required to) instead seek the Producing Party's agreement by
3 requesting, in writing, to examine the non-party or have the non-party testify and
4 shall identify the documents designated as about which it seeks to examine the non-
5 party or about which it seeks to have the non-party testify. In any motion, the
6 Producing Party shall have the burden of establishing before the Court the need to
7 prevent the non-party from being examined about or testifying about the
8 CONFIDENTIAL document. Alternatively, a Party may use the document in the
9 examination of a witness in court without further order of the Court after redacting
10 the information required by FRCP 5.2.

11 **VI. PROCEDURE TO CHALLENGE DESIGNATIONS**

12 This Protective Order shall not prevent any Party from moving the Court for an order that
13 information designated as CONFIDENTIAL by Producing Party is not, in fact, CONFIDENTIAL
14 information. Prior to so moving, the Party seeking to reclassify the information shall seek the
15 Producing Party's agreement by objecting, in writing, to the designation by specifying to
16 information at issue and the grounds for questioning the designation. The Producing Party shall
17 have ten (10) court days to respond to such request. In any motion, the Producing Party shall have
18 the burden of establishing before the Court the need for classification as CONFIDENTIAL. In
19 connection with any such motion, the Producing Party's designation shall be given NO WEIGHT.

20 **VII. RIGHT TO FURTHER RELIEF**

21 Nothing in this Protective Order shall abridge the right of any person to seek judicial
22 modification or amendment of this Protective Order.

23 **VIII. RIGHT TO ASSERT OTHER OBJECTIONS**

24 This Protective Order shall not be construed as waiving any right to assert a claim of
25 privilege, relevance, or other grounds for not producing Discovery Material.

26 **IX. RIGHTS OF THE FTC**

27 Notwithstanding the foregoing, nothing in this Protective Order shall impose any
28 restrictions on the use or disclosure of Confidential Discovery Material by the FTC as provided

1 by: (1) the FTC's Rules of Practice and any cases construing them, (2) Sections 6(f) and 21 of the
2 Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2, and any cases so construing them;
3 (3) any other legal obligation imposed on the FTC.

4 **X. SURVIVAL OF OBLIGATIONS**

5 The obligations created by this Protective Order shall survive the termination of this action
6 unless otherwise modified by the Court. The Court shall retain jurisdiction, even after termination
7 of this action, to enforce this Protective Order and to make such amendments and modifications to
8 this Protective Order as may be appropriate.

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10 
11 GEORGE FOLEY, JR.
12 United States Magistrate Judge

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DATED: May 9, 2013

Attachment A

**Acknowledgment of Receipt of Protective and
Confidentiality Order and Contempt for Violation of Order**

The undersigned hereby acknowledges receipt of a copy of the Protective Order (the “Order”) entered by the Court in Federal Trade Commission v. Ideal Financial Solutions Inc. *et al.*, Case No. 2:13-CV-0143-MMD-GWF. The undersigned states that he or she has read, fully understands, and agrees to be bound by the provisions of said Order with respect to documents or information designated “CONFIDENTIAL” including the prohibition on the communication of any information contained in such documents or information except pursuant to the explicit terms of the Order, and is aware that for any violation of the provisions of said Order, he or she is subject to such penalties as the Court may direct. The undersigned further expressly acknowledges that the disclosure in any manner of “CONFIDENTIAL” information other than as allowed by the Confidentiality Order will constitute a violation of an Order of the Court.

Signature

Name (printed or typed)

Title

Date